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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 LEWIS D. CHRISTOPHERSON,

Case No. 3:13-cv-00114-MMD-VPC

9 Plaintiff,

ORDER ADOPTING AND ACCEPTING  
10 v.  
11 CAROLYN W. COLVIN,  
Commissioner of Social Security,  
12 Defendant.

RECOMMENDATION OF UNITED STATES MAGISTRATE  
JUDGE

13  
14 Before the Court is Magistrate Judge Valerie P. Cooke's Report and  
15 Recommendation ("R&R") (dkt. no. 32) regarding Plaintiff Lewis D. Christopherson's  
16 Motion for Remand and/or Reversal ("Motion") (dkt. no. 17) and Defendant Carolyn W.  
17 Colvin's Opposition and Cross-Motion to Affirm (dkt. nos. 28, 29). Plaintiff replied to the  
18 Opposition and Cross-Motion (dkt. no. 30). Magistrate Judge Cooke issued the R&R on  
19 March 24, 2014, concluding that substantial evidence supports the Administrative Law  
20 Judge's ("ALJ") findings. (Dkt. no. 32 at 18-19.) Plaintiff timely filed an objection (dkt. no.  
21 33) to which Defendant responded (dkt. no. 34).

22 This Court "may accept, reject, or modify, in whole or in part, the findings or  
23 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
24 timely objects to a magistrate judge's report and recommendation, then the court is  
25 required to "make a *de novo* determination of those portions of the [report and  
26 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiff's  
27 objection, the Court has engaged in a *de novo* review to determine whether to adopt  
28 Magistrate Judge Cooke's R&R.

1       The R&R finds that the ALJ's decision to uphold the denial of Plaintiff's disability  
2 claims was supported by substantial evidence in the record. The R&R provides a  
3 thorough and detailed explanation of the ALJ's decision that can be used to address  
4 each of Plaintiff's objections, which reiterate the arguments he raised in the Motion.

5       First, Plaintiff argues that the ALJ failed to properly assess his residual functional  
6 capacity ("RFC") because the ALJ gave improper weight to the opinions of a consultative  
7 examiner and a state agency reviewing physician. (Dkt. no. 33 at 3.) Plaintiff contends  
8 that the consultative examiner failed to review his entire medical record in carrying out  
9 his independent examination. (*Id.* at 4.) Plaintiff further argues that both the consultative  
10 examiner and the reviewing physician should have considered medical findings that  
11 were made after their examinations. (*Id.* at 4-5). Plaintiff, however, does not cite to any  
12 authority that requires examining physicians to review subsequent medical evidence.  
13 Rather, it is the SSA that must determine an applicant's RFC by assessing the whole  
14 record, including all evidence and medical reports. 20 C.F.R. § 404.1545(a); see  
15 *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). The R&R discusses that in  
16 determining the RFC, the ALJ considered the entire record in addition to the subsequent  
17 medical findings of Plaintiff's treating physicians. (Dkt. no. 32 at 8, 10-12.) The R&R  
18 concludes that the ALJ did not err in considering findings from the consultative examiner  
19 and the state agency physician as part of the RFC determination. (*Id.* at 13.) The Court  
20 agrees with the Magistrate Judge's conclusion that substantial evidence supports the  
21 RFC determination.

22       Second, Plaintiff contends that the ALJ improperly evaluated the credibility of his  
23 subjective complaints. (Dkt. no. 33 at 6-8.) The R&R notes that the ALJ found  
24 inconsistencies between Plaintiff's subjective complaints regarding the severity of his  
25 symptoms, Plaintiff's testimony about his daily activities, and the medical evidence. (Dkt.  
26 no. 32 at 16-18.) The Court agrees with the Magistrate Judge's conclusion that these  
27 inconsistencies adequately support the ALJ's credibility determination. (See *id.* at 18.)

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The R&R recommends that the Court deny Plaintiff's Motion for Remand and/or Reversal (dkt. no. 17) and grant Defendant's Cross-Motion to Affirm (dkt. no. 29). Upon review of the R&R and the record in this case, the Court determines that it is appropriate to adopt the R&R in full.

It is hereby ordered that the R&R (dkt. no. 32) is accepted and adopted. Plaintiff's Motion to Remand and/or Reverse (dkt. no. 17) is denied and Defendant's Cross-Motion to Affirm (dkt. no. 29) is granted. The Clerk is directed to enter final judgment in favor of Defendant Carolyn W. Colvin, Commissioner of Social Security, pursuant to this Order.

DATED THIS 4<sup>th</sup> day of March 2015.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE